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JEANNE HICKS, CLERK

Katherine Glenn

BY: _____

Larry A. Hammond, 004049
Anne M. Chapman, 025965
OSBORN MALEDON, P.A.
2929 N. Central Avenue, 21st Floor
Phoenix, Arizona 85012-2793
(602) 640-9000
lhammond@omlaw.com
achapman@omlaw.com

John M. Sears, 005617
P.O. Box 4080
Prescott, Arizona 86302
(928) 778-5208
John.Sears@azbar.org

Attorneys for Defendant

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

vs.

STEVEN CARROLL DEMOCKER,

Defendant.

No. P1300CR20081339

Div. 6

**DEFENDANT'S OPPOSITION TO
STATE'S MOTION AND ORDER
FOR TAKING TESTIMONY OF
VOLUNTARINESS WITNESS,
CMDR. SCOTT MASCHER, OUT
OF ORDER AND REQUEST FOR
EXPEDITED RULING**

Mr. DeMocker, by and through counsel, hereby objects to the State's motion for taking the testimony of voluntariness witness, Commander Scott Mascher, out of order and request for expedited ruling and asks the Court to deny the State's motion.

Trial in this matter was set on May 12, 2009 to commence on May 4, 2010. On April 12, 2010, with less than one month to trial, the State filed a Motion In Limine Re Voluntariness of Defendant's Statements to determine the voluntariness of statements Mr. DeMocker made in July and October 2008. The defense response is due on April 22, 2010. The State now asks the Court to permit evidence to be taken on the motion on April 20, prior to the time permitted for the defense to respond. The Court should deny this motion where the State waited until the parties were engaged in the jury selection process in a capital case to litigate an issue that has been known

1 to the State since Mr. DeMocker's arrest in October 2008. The defense should not
2 now be made to rush to prepare and hold an evidentiary hearing without the proper
3 time to respond solely because the State waited until the last minute to file a motion it
4 has been aware of for over a year.

5 Additionally, the Court set aside time on April 13 and April 20 for issues
6 relating to the jury selection process. Well in advance of the hearing on April 13, the
7 defense provided the State with a list of proposed jurors to excuse based on hardship.
8 This list was developed after a careful review of the over 300 juror questionnaires
9 received. The defense also provided the State with a list of over 100 people who the
10 defense believes both sides would not object to on the basis of the jury questionnaires
11 to be called for individual voir dire. Instead of engaging in a good faith attempt to
12 review these lists, the State, a few minutes prior to the start of the hearing on April 13,
13 provided a list of 144 jurors it proposed to excuse for cause. The State did not attempt
14 to respond to the earlier provided defense lists regarding excusal for hardship or
15 potential jurors identified for individual questioning.

16 The Court set an additional hearing to address jury selection issues on April 20,
17 the date the State now proposes that Commander Masher provide testimony on its
18 motion regarding voluntariness. Given the State's prior lack of cooperation on the
19 jury selection issues, the defense believes that all available time on April 20 will be
20 necessary to focus on these issues. Therefore, any request to divert time and attention
21 from the jury selection process during the April 20 hearing by taking Commander
22 Mascher's testimony out of order on that date is unfair to the defense and would
23 further interfere with the Court's addressing the issues regarding the jury selection
24 process.

25 The defense should not be made to rush to prepare, respond and hold a partial
26 evidentiary hearing on a motion the State could have filed a year ago during a hearing
27 where serious issues of jury selection are at stake. The defense should also not be
28 made to sacrifice time well spent on the jury selection process for the out of time

1 testimony of Commander Mascher where the State has shown an unwillingness to
2 meaningfully address issues involving the jury selection process. For these reasons,
3 the defense requests that the Court deny the State's motion.

4 DATED this 16th day of April, 2010.

5 By: 

6 John M. Sears
7 P.O. Box 4080
8 Prescott, Arizona 86302

9 OSBORN MALEDON, P.A.
10 Larry A. Hammond
11 Anne M. Chapman
12 2929 N. Central Avenue, Suite 2100
13 Phoenix, Arizona 85012-2793

14 Attorneys for Defendant

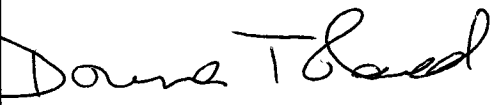
15 **ORIGINAL** of the foregoing sent via Federal Express for
16 filing this 16th day of April, 2010, with:

17 Jeanne Hicks
18 Clerk of the Court
19 Yavapai County Superior Court
20 120 S. Cortez
21 Prescott, AZ 86303

22 **COPIES** of the foregoing emailed this
23 this 16th day of April, 2010, to:

24 The Hon. Thomas B. Lindberg
25 Judge of the Superior Court
26 Division Six
27 120 S. Cortez
28 Prescott, AZ 86303

Joseph C. Butner, Esq.



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